No. 9(1)-82-6Lab/8496.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947, (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. Faridabad Forging (P) Ltd., Plot No. 54. Sector 6, Faridabad.

BEFORE SHIR M.C. BHARDWA J, PRESIDIŒG OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD.

**Reference No. 30 of 1981.**

*Between*

SHRI H.S. PANNU WORKMAN AND THE MANAGEMENT OF M/S FARIDABAD FORGINGS (P) LIMITED, PLOT NO. 54, SECTOR-6, FARIDABAD.

*Present.*—Shri S.S. Gupta, for the workman.

Shri R.C. Sharma, for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri H.S. Pannu and the management of M/s Faridabad Forgings(P) Limited, Plot No. 54, Sector-6, Faridabad by order No. ID/FD/9/81/7908, dated 13th February, 1981, to this Tribunal for adjudication, in exercise of powers conferrd by clause(d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri H.S. Pannu was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. The following issues were framed by my order, dated 28th July, 1982:—

(1) Whether the workman has settled his dispute with the management ?

(2) If issue No. 1 is not proved, whether the termination of services of the workman was justified and in order ? If not, to that relief is he entitled ?

(3) Whether the workman was on temporary basis?

And the case was fixed for the evidence of the management. The management examined Shri Ram Phal Accountant as MW-1 and the workman examined himself as his own witness as WW-1. Arguments were heard. My finding on issue-wise is as under:—

**Issue No.1.**—MW-1 deposed tht he had brought attendance register from July, 1980 to October, 1980. Register was filed by the concerned workman. Register of casual and temporary workers for the above period was also filled by him. He was time keeper, Shri Suraj Bhan Sharma, Labour Inspector had called the management regarding case of the concerned workman and his relation Shri Harvinder Singh who was also working temporarily in the company. The workers, both of them, had agreed that in case Rs 400 was paid to Shri Harvinder Singh and Rs. 1,000 to the concerned workman they will settle their claims. It was agreed and payment was made in the presence of Shri Suraj Bhan, —*vide* Ex.M-1. Receipt was in the hand of the concerned workman.

WW-1 deposed that he started working inthe company from first of June as time keeper. The post was of permanent nature. He was not issued any appointment letter. His service was terminated because he made payment of increased minimum wages to some of the workman. The others also raised their voice for the annouced payment. The management terminated his service on 19th October, 1980 hold him reasponsible for the dispute. He made complaint to the Labour Inspector in this behalf. There was no settlement, therefore he was asked to submit demand notice. He had also filed a claim petition before the Payment of Wages Authority. Shri Ram Phal Accountant of the company came to his house and told him that the management was agreeable to pay Rs. 1,000. He signed a receipt and never went to the Payment of Wages Authority thereafter. There was no other person at the ime of signing the receipt. No settlement was arrived at in receipt of the demand notice. In cross-examination he replied that he did not know the date when minimum wages were increased. He did not remember the name of workers to whom increased wages of pay were not paid. He had no notice of the Labour Inspector regarding his complaint. He admitted that he received notice fromthe Concilliation Officer of his demand notice. He admitted that he worked in Faridabad Rubber Soles Pvt. Ltd., Faridabad from 1st October, 1981 to 15th October, 1982. He had also worked with M/s Rattan Chand Harjas Rai. He admitted that Ex. M-2 was in his hand. He admitted hat he marked attendance in his own hand and used to prepare wage bill. He used to get Rs. 350 per month from Faridabad Forging (P) Limited and Rs. 585 per month from Faridabad Rubber Soles Pvt. Ltd., Faridabad.

I have gone through the file and find that the workman was appointed on 2nd July, 1980 and his service was terminated on 9th October, 1980. The workman admitted Ex. M-1 to be in his own hand (receipt of payment of Rs. 1000). They receipt is on account of earned wages, due wages, earned leave, bonus service compensation and in full and final settlement against all claims including reinstatement or re-employment. It is signed by the concerned workman as well Shri Suraj Bhan Sharma, Labour Inspector, Ballabgarh. The statement of the workman that he had not settled of his claim, is of no consequences. He was time keeper and that the receipt was in his own hand. It speaks of settlement of all his claims. He had only about three months service and received Rs. 1,000 from the management. I find that he settled his claim with the management. This issue, therefore, is decided in favour of the management.

**Issue No. 2 & 3.**—In view of the decision given in issue No. 1, there is no necessity to discuss these issues.

While answering the reference, I pass my award that the workman was not entitled to any relief.

Faridabad, the 4th August, 1982.

M.C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 887, dated 11th August, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

**No. 9(1)82-6Lab./8498.**—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947(Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/S The Faridabad Central Co-operative Consumer's Store Ltd. 2-A, 9-A, NIT, Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

**Reference No. 29/1979**

*Between*

SHRI DEVINDER KAMAR WORKMAN AND THE MANAGEMENT OF M/S THE FARIDABAD CENTRAL CO-OPERATIVE CONSUMER'S STORE LTD. 2-A, 9-A N.I.T. FARIDABAD.

*Present* :—

Shri S.S. Gupta, for the workman.

None, for the management.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Devinder Kumar and the management of M/s Faridabad Central Co-operative Consumer's Store Ltd. 2-A, 9-A, N-I.T. Faridabad, by order No. 11/166-78/2187, dated 11th November, 1979, to this Tribunal, for adjudication, in exercise of powers conferred by clause(d) of the Industrial Disputes Act, 1947 :—

Whether the termination of services of dismissal of Shri Devinder Kumar was justified and in order? If not, to what relief is he entitled ?

Notices of the reference were sent to the parties who appeared and filed their pleadings. The following issues were framed by my predecessor on 9th August, 1979 :—

(1) Whether the management is not an Industry under the I.D. Act ?

(2) Whether the claimant is a workman under the I.D. Act ?

(3) Whether the termination of Services of the workman was justified and in order ?

(4) Relief.

And the case was fixed for the evidence of the workman. Issue No. 1 and 2 were treated as preliminary issues and after trial issue No. 1 and 2 were decided in favour of the workman by my order dated 3rd September, 1981 and the case was fixed for the evidence of the management on Issue No. 3.

*Issue No.* 3 :—The management did not appear on the date fixed therefore, the evidence of the management was closed and the workman was called upon to lead his evidence who made his own statement on 4th January, 1982. The arguments were heard. WW-1, the concerned workman deposed that he was appointed on 3rd October, 1966,—*vide* appointment letter Ex. W-1. He was given transfer order Ex. W-2. He further deposed that Faridabad Central Cooperative Consumers Store and Narnaul Central Co-operative Consumer's Store were separate cooperative societies. He had no connection with the Narnaul Co-operative Store. No salesman was ever transferred from one to other above-mentioned stores. He made protest Ex. W-3 against the transfer to the management but he was relieved from duty, vide Ex. W-4. He submitted his demand notice Ex. W-5.

I have gone through the documents and find that the workman was appointed as salesman in the Faridabad Central Co-opertaive Consumer's Store Ltd. There was no condition of transfer in the appointment letter. According to document Ex. W-2 his transfer was made to Narnaul Central Co-operative Consumer's Store and he was relieved from duty —vide order Ex. W-4. In the written statement, it was contended that the order of transfer was prefectly in order, but the management failed to lead any evidence to show that there was a obligation upon the workman to serve under the Narnaul Co-operative Consumer's Store. No condition of service or relationship of one store with the other in respect of workman concerned was proved by the management. In these circumstances, I find that the termination of the service of the workman was not in order.

While answering the reference, I pass my award that the workman was entitled to his reinstatement with continuity of service and with full back wages.

Dated : The 14th August, 1982

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 889, Dated The 11th August, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

**No. 9(1)82-6 Lab/8665.**—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947(Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s H.B.B., N.I.T., Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER LABOUR COURT HARYANA, FARIDABAD

**Reference No. 79 of 1980**

*Between*

SHRI KARAN SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S H.B.B., & N.I.T., FARIDABAD

*Present*—
Shri Darshan Singh, for the workman.
Shri S.S. Sethi, for the respondent management.

AWARD

This reference No. 79 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/32-80/9815, dated 25th February, 1980 under section 10(i)(c) of the Industrial Disputes Act, 1947 existing between Shri Karan Singh, workman and the respondent management of M/s H.B.B., NIT, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Karan Singh was justified and in order ? If not, to what relief is he entitled ?

Notices were sent to the parties after receiving this reference order The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim Statement is that he was a permanent workman working from 27th June, 1963 and drawing Rs. 670 per month. The respondent illegally terminated the services on 31st December, 1979 without any chargesheet or enquiry. The plea taken by the respondent of over age and retirement notice was wrong. The retirement is against the contract of service and against the certified Standing orders applicable to the parties. So, the termination was illegal and un-justified in the eye of law and the claimant is entitled for the reinstatement with full back wages and continuity of service.

According to the written statement the case of the respondent is that the workman was retiring reaching the age of superannuation. It did not amount to termination of service under section 2(a) of the Industrial Disputes Act. The workman filed a suit before sub-judge, Ballabgarh restraining the management from retiring him. It was also mention in the plaint of the workman that his date of retirement is 14th October, 1981. The case is still pending in the court. The present claim of the applicant is wrong. The workman was employed on 27th July, 1963 and drawing Rs. 626 per month at the time of his retirement. The notice for retirement was issued to the workman for which the workman replied. The workman was retired on 26th August, 1979 by the respondent w.e.f. 31st December, 1979. The retirement was not illegal. The letter issued to the workman was intimation of retirement attaining the age of superannuation on 31st December, 1979. The workman was relieved from service according to the settlement dated 1st August, 1971. The date of the superannuation in the company was 58 years. When he joined the company he informed his date of birth as 1st January, 1922 and the said date was entered in the record of the company. The workman was aware of his date of birth since the wage sheet prepared every month contains the date of birth and the workman had been signing the wage sheet at the time of taking salary every month. On the reply of the workman he was asked to furnish proof of his date of birth by showing the birth certificate of birth entries in the municipal records or school leaving certificate but no such certificate was produced. The workman produced a copy of letter addressed by the Army authorities to the workman and copy endorsed to the company. It was mentioned in the letter that as far as the military records were concerned Shri Karan Singh was enroled in the Army on 15th October, 1941 and his age was shown as 18 years and his date of birth may therefore be taken as 15th October, 1923 and this was being done even in para military forces like CRPF, GREF, BSF, etc. The aforesaid letter does not amount to any certificate regarding date of birth. The date 15th October, 1923 mentioned as date of birth of Shri Karan Singh has been arrived at by estimation and not on any basis. So the workman was retired correctly and there is no dispute between the parties.

On the pleadings of the parties, the following issues were framed :—

(1) Whether the dispute raised before this court is an Industrial Dispute within Section 2-A of the I.D. Act, 1947 ? If so to what effect ?

(2) Whether the reference/dispute is maintainable in this Court in view of the written statement filed by the management ? If so, to what effect ?

(3) Whether the termination of the services of the workman was proper, justified and legal ?

My findings on the issues are as under :—

*Issues No.* 1 & 2.—At the time of arguments the parties did not argue on these issues. They sumply argue on the main issue that is as per reference. So these issues are decided in favour of the workman and against the respondent.

*Issue No.* 3.—The representative of the respondent argue on this issue that the workman joined the services on 27th July, 1963 as security watchman as he was ex-service man and was drawing Rs. 626 per month. The workman gave an application for employment. The photostate copy is Ex. M-1 as stated by Shri Sajjan Singh Security Asstt. as MW-1 that it was filled up by him and the entries in the application are exactly the same which were stated by the claimant to him at the time of filling up of this form. He did not show any military discharge certificate at the time of workman entries into service. The entries regarding date of birth was stated by the workman at the time of employment. The witness further stated that the workman was issued the pay slips and the workman received the pay by signing. The date of birth mentioned on this pay slips which is Ex. M-2 clears the whole position that he also admit this date of birth by signing his pay slips. He further argued that the another witness of the respondent Shri Ved Parkash Sethi has stated in the statement that the workman was issued Establishment Card which are Ex. M-4 and M-5 in which the medical officer has reported in respect of

the claimant's age. The witness has further stated that there are appraisal reports of the workman which are Ex. M-6 to M-8 on which the date of birth is given as 1st January, 1922. He further argued that there was a settlement which is Ex. M-10 in which it was settled that the retirement age of the workman shall be 58 years. He further argued that Shri Prem Parkash Seth, Asstt. Personnel Department has stated that wage slips are issued to the workmen every month and they are prepared in the form as Ex. M-2 in which the date of birth of every workman has been given. The representative of the respondent argued that the original record of the pay slips was brought in the Court and shown in which the date of birth of every employee was given on the pay slips. The workman gave the date of birth at the time of entering tin service of the respondent as 1st January, 1922 and received the pay on the pay slips on which the date of birth is given. The workman never objected the date of virth means that he was admitting the date of birth and on the basis of date of birth. The workman was to retire on 31st December, 1979 so the notice was issued to the workman on 26th August, 1979 for informing his retirement. The workman filed the reply to that letter which is Ex. M-16 and the copy of Miliary letter which is Ex. M-17 which was endorsed to the company was given to the respondent. In the Military letter it was given that as per records the age of abovenamed workman was enrolled in the Army was 15th October, 1941 has been shown as 18 years and his date of birth may be taken as 15th October, 1923 and this is being done even in para Military forces like C.R.F.P., G.R.E.F., B.S.F. etc. So this may be considered. He further argued that this letter Ex. M-17 was not the athentic proof of date of birth of the workman after receiving the letter from the workman Ex. M-16. The workman was given he opportunity to furnish the proof of date of birth showing the birth certificate or birth entries in the municipal records or school leaving certificate but no such record was produced by the workman before the respondent. The letter issued to the workman does not amount to any certificate regarding date of birth and on the other hand the company may like to consider his case regarding the date of birth. As per report of Military authority his age was 18 years as the minimum age for recruitment was 18 years. There was a greater inducement to declare the age. The respondent after considering the above all records decided to retire the workman on 31st December, 1979 as per its notice and the retirement is not termination and does not come under the Industrial Disputes Act.

The representative of the workman argued that the respondent has admitted the enterance of the workman and pay drawn by him. Now the question is whether the date of birth considered by the respondent is correct or wrong. The workman entered in the Military service at the age of 18 years as shown in the letter from the Minitary authority and according to that the date of birth of the workman was 15th October, 1923. There is difierence in the record for date of birth of the workman in Ex. M-1 which was filled up by the respondent witness Shri Sajjan Singh, Security Asstt. which he admitted ih his statement and the E.S.I. form was also filled up by the respondent witness for the workman E.S.I. cards. The workman has produced the copy of the E.S.I. form from the E.S.I. authority which is Ex. W-2 in which the date of birth is shown as 1927. To prove this fact that the workman called Shri Hoshiar Singh, L.D.C. of Local Office, E.S.I. as WW-1 who has stated that he has brought the summoned record in his date of appointment is shown as 27th July, 1963 and his age was 30 years. The date of birth of the workman is 1927. He has further stated in his statement that all these informations were supplied by the respondent in their declaration from which is signed by the Labour Welfare Officer of the respondent company. The management has to submit the declaration form under rules 11 and 12 of the E.S.I. The E.S.I. card was issued by the E.S.I. Office. He further argued that the application form Ex. M-1 was filled up by the respondent witness MW-1 and the E.S.I. form declaration form was filled up by the workman. There is difference in the date of birth. Now the question is which is the correct. The workman has filled up affidavit in this respect showing his age as 25th October, 1923 which is corroborated by the writing of the Army authority. The workman has not claimed date of birth which is mentioned in the E.S.I. form which Ex. W-2 becuase it was mistake of the respondent and ot the correct date of birth of the workman and if the card is taken into consideration then the workman has to work for more years, but the workman has taken these things under consideration and mentioned the correct and genuine date of birth in the affidavit. He further argued that the workman also produced the discharge certificate in the court which proves the letters of the Army authorities. They received the letters from the Army authority before removing the workman. The letter received on 13th December, 1979 where the workman was relieved from service on 31st December, 1979 after receiving this letter. There was no complaint against the workman and he was working properly. It was the duty of the respondent to consider this letter of the Army authority and the workman should have allowed up to that date and when there is a doubt about the date of birth of the workman and there are two different entries in the record of the respondent. It was their foremost duty to consider Ex. M-17 the letter from the Army Authority. He further argued that the workman has tried to creat a doubt in the court for date of birth ane joining for the entries in the record of the management are wrong. As in Ex. M-1 the date of birth is given as 1st January, 1922 and in the declaration form Ex. W-2 date of birth is given 1927 and both the records are of the respondent but both the record of the respondent are not correct and the respondent should have considered the old record of the workman which come from Military authority from where he was discharged. He further argued that as stated by the workman as WW-3 he is illetrate person and did not join any school and there is no entry of date of birth in the birth register as in the old days there was no care of these things and in the absence of this thing the athenticated proof of the workman is Military certificate which was not considered by the respondent even after the recommendation from the Military authority. So the respondent has wrongly terminated the services of the workman and the workman is entitled for his reinstatement with full back wages and continuity of service.

After hearing the arugments of both the parties and going thorugh the file, I am of the view that the workman has produced all his relevant record before the respsondent which he could get by any service. There is a ambiguity in the record of the respondent. The application form and declaration form for E.S.I. were prepared by the respondent in which different date were given. So the respondent has failed to prove that the removal

of the workman was justified when the workman was a good person and there was no complaint against him he could serve the company one year more without any trouble. When there is doubt in any case about any fact, the benefit of doubt goes in favour of the workman. The respondent should have given the consideration to the Minitary authority letter which they received early then they relieved the workman. They should have considered it properly and the workman has also filed the affidavit in this respect so the reliving of the workman was not justified by the respondent. The workman has to retire as given by him in the application on 16th October, 1981 and as recommended by the Military authority. So the date of retirement has gone. So he cannot be reinstated as he has to reitre on 16th October, 1981 but he is entitled for the wages from the date of removal up to date of retirement, i.e. 16th October, 1981.

This be read in answer to this reference.

Dated the 2nd August, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement. No. 1773, dated the 17th August, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana, Faridabad.

**No. 9(1)-82-6Lab/8666.**—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. Sartaj Industries, 0/3 Link Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

**Reference No. 446/80**

*between*

SHRI BABU LAL, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. SARTAJ INDUSTRIES, 0/3, LINK ROAD, FARIDABAD

Shri M.K. Bhandari, for the workman.

Shri A.S. Chadda, for the respondent management.

AWARD

This reference No. 446/80 has been referred to this Court by the Hon'ble Governor of Haryana, *vide* his order No. ID/FD/84-78/49071, dated 15th September, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Babu Lal, workman and the management of M/S Sartaj Industries, O/3, Link Road, Faridabad. The term of the reference was :—

Whether the ternmation of service of Shri Babu Lal was justified and in order ? If not, to what relief is he entitled ?

On receiving this reference, notices were issued to the parties. The parties appesared and filed their pleadings. The case of the workman according to the demand notice and rejoinder is rthat the workman joined the service on 9th July, 1969 as fireman and was receiving Rs. 275 per month and he was terminated on 20th February, 1978 without any written notice, due to his union activities. The workman made a complaint to the Labour Inspector on 21st Febuary, 1978 for removing the workman without any notice. So the termination of the workman was illegal and the workman is entitled for the reinstatement with full backwages and continuity of service.

The case of the respondent according to the demand notice is that the workman raised a dispute on 22nd March, 1978 stating therein that the workman was thrown out by the management without any reason. The conciliation proceedings commenced and ultimately culminated into a decision by the appropriate Government

that the case of the claimant did not fall within the ambit and scope of section 2-A of the Industrial Disputes Act and the sam e was not fit for reference for adjudication. This decision was communicated to the management,—*vide* letter dated 28th July, 1978. The present reference has been made in respect of the same demand notice without the proper conciliation proceedings having been carried out after the rejection of the claim of the claimant. Therefore, the reference is bad in law and this court has no jurisdiction to hear this reference. The respondent never terminated services of the claimant at any point of time. The claimant has failed to file claim statement and there is nothing in the demand notice to reply. So the claimant is not entitled for any relief. The present reference is made by the appropriate Government with inordinate delay. The reference being belated is liable to be answered in favour of the management. The claimant was the member of any union and he made no complaint to the Labour Inspector in this respect. The fact is that on 20th February, 1978 at about 6.00 P.M. he picked up a quarrel with one Shri P.P. Bhaskar his immediate supervisor. The workman physically assaulted him by giving him a first blow. He picked up hammer and wanted to give hammer blow to Shri Bhaskar but he was caught by another worker. Then the workman ran away from the factory gate. A regular charge-sheet dated 22nd February, 1978 requiring him to reply the charge-sheet but instead of replying the charge sheet the workman raised the demand notice which is premature. The respondent was only taking disciplinary action against him to which he was required to reply but the claimant failed to do so. He was aware of the charge-sheet during the conciliation proceedings but he chose not to resort to the principles of departmental enquiry and chose to agitate the present demand notice, and due to this fact the appropriate Government rejected the demand notice of the claimant second time. It is simply to harass the management and has lost the confidence in the management. The workman is gainfully employed and the reference may be rejected.

On the pleadings of the parties, the following issues were framed :—

(1) Whether the reference is bad as it has been made by the Government without giving adequate opportunity to the respondent on conciliation after it had been rejected once by the Government ? If so, to what effect ?

(2) Whether the termination of the workman is proper justified and in order ? If not, to what relief is he entitled ?

(3) Relief ?

My findings on the issues are as under :—

*Issue No.* 1.—The representative of the respondent argued ont his issue is that the workman was not terminated by the respondent on 20th February, 1978. On 20th February, 1978 the workman was on duty as Boilerman and Shri P.P. Bhaskar was his immediate supervisor. Shri Bhaskar wanted some fire from the boiler which the workman refused to give the workman sent by the supervisor. Then Shri Bhaskar went to the workman to take the fire but the workman abused him and assulted him. He tried him to give him hammer blow. In the meantime the Chowkidar came and took the hammer after that he left the boiler un attended and went out the factory. The supervisor gave the complaint Ex. M-1 on the basis on which a charge-sheet was issued to the workman which is Ex. M-2 as stated by MW-1 Shri Arjan Singh, Partner of the company. The workman never replied the chargesheet and gave the demand notice instead of giving the reply and the respondent take the stand before the Conciliation Officer that they have not terminated the services of the workman. The copy of the stand taken by the respondent is Ex. M-3 . The Conciliation Officer sent the report on the basis of plea taken by the respondent. The Conciliation Officer sent his report which is Ex. M-4 and M-5 After this report the respondent received the letter Ex. M-6 for rejecting the demand notice of the workman. The workman again made a complaint to the Conciliation Officer and respondent replied which is Ex. M-7. The reply was considered by the Conciliation Officer and the letter received from the Government for rejecting further application of the workman is Ex. M-8. The Government did not considered fit the case of the workman for sending the same for adjudication. After rejection the demand notice of the workman the respondent did not receive any fresh demand notice for any conciliation proceedings took place for the demand notice and the reference is without hearing the parties cannot be good in the eye of law. He further argued that as stated by the respondent witness MW-1 as partner is quite correct and supported by document which was not rebutted by the claimant in any way. The reference cannot be sent by the appropriate Government without hearing the parties. In this case after rejecting the demand notice of the claimant twice the workman should have made an application or demand notice to consider his case for referring the matter for adjudication and after receiving any such application for appeal the parties should have been heard before refering the case for adjudication. The respondent did not receive any notice. from the Labour Officer or from the Government for rehearing the demand of the claimant. So the Government cannot make the reference for adjudication without hearing the parties under the law.

The representative of the workman argued on this issue that it is correct that the Govenrment rejected the demand notice of the workman twice but after filing the appeals the Government accepted the appeal and the case was referred for adjudication. There is nothing wrong in referring the case for adjudication and the respondent has produced no law regarding this reference that it is bad in law. Without giving the opportunity to the workman without which it is not considered that the reference is bad in law.

After hearing the parties and going through the file. I am of the view that when the respondent has produced no law regarding this issue whether it is bad in law or not. I considered that the reference is not bad in law, and the issue is decided in favour of the workman and against the respondent.

*Issue No.* 2.—The representative of the respondent argued on this issue that it is not the case of termination but the case of loss of lien. The workman abandoned his service of his own accord. He referred the statement of Shri P.P. Bhaskar as MW-2 who has stated that on 20th February, 1978 at about 6.00 p.m. he was on duty and he sent one workman to bring the fire from the boiler for managers' Arth as it was very cold. The claimant refused to give the fire to that workman then he himself went and asked for the fire. he refused to the witness also, and rebuke the witness and gave him ist blow on his body and tried to attack him by hammer on which he made the noise and the chowkidar came and caught the hammer. The claimant ran away from the factory and did not turn up for joining the duties. The witness gave the complaint to the respondent which is Ex. M-1 on which the charge-sheet was issued to the workman which is Ex. M-2 which was sent through registered post which received back undelivered which is Ex. M-9. The workman has admitted the address given on the registered envelop and there is report on the envelop that there is no such person living here by the postal authority which shows that the workman avoid the charge-sheet given to him. After receiving this undelivered letter the charge-sheet was displayed on the notice-board. The workman gave the demand notice and the respondent appeared before the Conciliation Officer and submitted their reply which is Ex. M-3 taking the plea that the workman is not taking the charge-sheet dated 22nd February, 1978 and his services are not terminated by the respondent. The workman was directed by the respondent to take the charge-sheet and participate in the enquiry but even after that the workman did not turn up to take up the charge-sheet and participate in the enquiry. So the workman has abandoned the services of his own accord and not by the respondent. The Conciliation Offi cer sent the report which is Ex. M-4 and M-5 on receiving this report from the conciliation officer the Government rejected the demand notice of the workman and sent the information to the respondent which is Ex. M-6. After rejecting the demand notice the workman filed the application before the Conciliation Officer. The respondent replied the same which is Ex. M-7 taking the same plea and the conciliation officer sent the same to the Government and the Government again rejected the application of the workman and sent the information to the respondent which is Ex. M-8. The statement of Shri P.P. Bhaskar was corroborated by Shri Jodh Bahadur watchman as MW-3 who wa s the eye-witness of the whole scene. There is no fault of the respondent management in this case. The whole fault is of the workman that he ran away from the factory without informing respondent and did not turn up even after the conciliation proceedings to participate in the domestic enquiry. He further argued that the workman has admitted in his cross-examination as WW-1 that he has no enmity with Shri P.P. Bhaskar or Shri Jodh Bahadur watchman. He has also admitted the fact of quarrel in his cross-examination dateed 20th February, 1978 and also admitted the fact that they left the premises of the factor on that day. and also amditted that the respondent charge-sheet the workman and the enquiry was constituted but no copy of the charge-sheet was given to him. He further argued that the workman ahas also admitted the factum of the demand notice by the Government. The workman chose to raise the demand and not to appear before the enquiry officer because the allegation against the workman was so serious and he knows this fact that the charge-sheet are genuine and true and he has nothing to say about these charge-sheets. So there is no case of the workman for his reinstatement when he has left his services of his own accord.

The representative of the workman argued on this issue that the workman was an old employee of the respondent and the charges framed against the workman were false and to victimize him due to union activities. The workman was removed from service on 20th February, 1978 due to union activities and there was nothing against the workman. The story of beating of the supervisor and threat to give him hammer blows has been introduced by the management before this Hon'ble Court. and there is no allegation in the charge-sheet, and in the report of the Conciliation Officer. The story is fabricated as the respondent never lodged any FIR or filed any complaint against the workman. There was no domestic enquiry against the workman and the workman has been never given the opportunity to explain his conduct. The workman was a union leader and his services were terminated on account of his being leader.

After hearing the arguments of both the parties, I am of the view that the arguments put forwarded by the workman's representative is not according to the file. The workman has not produced any witness or document to prove that he was a union leader in the factory. Simply saying that he was a union leader did not make him leader. The workman has admitted the incident of 20th February, 1978 in his cross-examination WW-1. He has also admitted the charge-sheet against him. He has lso admitted the rejection of his demand notice twice by the Government. On the other, hand the case of the respondent is the same from the very beginning before the conciliation officer and they have proved that there was an incident of quarrel on 20th February, 1978 and the workman left the factory on 20th Feburary, 1978 as he has admitted in cross-examination as WW-1. So it cannot be believed that there was no threat or incident of any quarrel and the workman is vivctimized due to union activities. The workman has not stated in his statement in the unkion activities in the company by the claimant without proving it canno t be believed that the workman was vaictimized. After the admission of incident of quarrel the workman should have faced the domestic enquiry stated by the repsondent but he chose not to face he enquiry and came in the court. So it is not the case of termination by the respondent but of voluntarily

abandonment of service of his own by leaving the factory without any information. So the workman is not entitled for any relief.

This be read in answer to this reference.

Dated the 2nd August, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endst. No. 1774, dated 17th August, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment, Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

**No. 9(1)82-6 Lab/8667.**—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s The Panipat Cooperative Sugar Mills Ltd., Panipat.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

**Reference No. 229 of 1981**

*between*

SHRI SUMER SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S THE PANIPAT COOPERATIVE SUGAR MILLS LIMITED, PANIPAT

*Present.*—

Shri Madhu Sudan Saran, for the workman.
Shri R.S. Malik, for the respondent management.

AWARD

This reference No. 229 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/KNL/3/78/43935, dated 27th August, 1981 under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Sumer Singh, workman and the management of M/s The Panipat Cooperative Sugar Mills Limited, Panipat. The term of the reference was :—

Whether the termination of service of Shri Sumer Singh was justified and in order. If not, to what relief is he entitled ?

Notices were sent to the parties on receiving this reference. The parties appeared and filed their pleadings. The case of the workman according to his pleadings is that he joined the service on 12th April, 1974 as a Security officer and was terminated on 6th November, 1977. The order was illegal and the workman was punished due to political tusle in the respondent factory. He was receiving Rs. 500 per month and was terminated to rationalise and standardisation in the plant with a sole intention to affect economy and to get better results with less staff, which come under section 9-A of the Industrial Disputes Act. The notice under section 9-A was madatory condition in respect of the workman retrenched due to these reasons without which the workman is deemed to continue in the service of the management without any pay. The service of the applicant was terminated on 3rd November, 1977. The demand notice was served on 26th November, 1977 but the same was rejected by the Government on 17th July, 1978. The appeal was filed by the workman before the State Government which was decided on 28th July, 1981 and the case was referred to the Court for adjudication and there is no fault of the workman for the delay in the reference.

The case of the respondent according to written statement is that the claimant was appointed as Security officer and does not come under the definition of 2(s) of the Industrial Dispuges Act and not a workman. So the reference is not liable to be adjudicated by this Hon'ble Court. The claimant was appointed as Security Officer in distillary Unit in the supervisory grade and retrenched on 6th November, 1977. There is no question of rationalisation or standardisation in the plant. The post of Security Officer in the Distillary Unit was abolished as th-

Distillary unit was situated within premises of the Sugar Mill and the security staff of the mill watch the security arrangements and the Distillary as it used to be done before the appointment of the claimant. The claimant does not fall under section 2(s) of the Industrial Disputes Act. The termination of service of the claimant was not a change in service condition and as such no notice under section 9-A was required to terminate the employee and in this case the implementation of section 9-A was not applicable. So the reference is bad and may be rejected.

On the pleadings of the parties, the following issues were framed :—

(1) Whether the claimant was a workman under section 2(s) of the Industrial Disputes Act ? If so, to what effect ?

(2) Whether the applicant is gainfully employed since his termination ? If so, to what effect ?

(3) Whether the termnation of service of the workman was proper, justified and in order ? If not, to what relief is he entitled ?

(4) Relief ?

My findings on the issues are as under :—

*Issue No.* 1.—The representative of the respondent argued on this issue that the applicant was appointed as Security Officer which comes under the supervisory duties and nature of duty of the workman was such that he cannot be counted as workman under section 2(s) of the Industrial Disputes Act. The workman used to get the benefit what the supervisors of the company used to get and the workman has admitted this fact in his application Ex. M-4 in which he has stated that he was appointed on 12th April, 1974 as Security Officer and workingas Security Officer till the date of this application, i.e. 9th June, 1975 and not getting any over time because the applicant comes under the Supervisory grade. But the supervisor grade gets 15 days salary after one year to compensate over time which is not given to the applicant. The General Manager of the respondent factory orders as 'be paid' on 9th June, 1975 after getting the reports from the office. The claimant is estopped after admission in the application that he does come under the supervisory grade and receive the benefit as ordered by the General Manager of the Supervisory grade person. When he used to get the benefit of supervisory staff so he cannot claim that he comes under the definition of workman, as the workman cannot get two benefits at the same time. The claimant had admitted this fact and the application in this statement as WW-1 in his cross-examination. The claimant was getting more than Rs. 500 including his allowance as he was given the quarter free of rent by the respondent company and if they include of the allowance which he was receiving then was receiving more than Rs 500 per month as his salary and under section 2(s) of the Industrial Disputes Act, 1947 he is not a workman and comes under the supervisory staff and the reference cannot be adjudicated by this hon'ble Court.

The representative of the workman argued on this issue that asstated by the workman in his statement as WW-1 he used to receive Rs. 450 as salary per month and had no managerial function to discharge. He had no power to appoint, to dismiss, warn or fine any workman. He could not suspend or having no control over the finance of the company. He could not take any decision independently with regard to the policy matter of the concern. The claimant was not discharging any supervisory duty as he has stated in his statement. He further argued that the respondent was not paying overtime to the workman as other workmen were used to get. He requested the management for the over time and they advised to give this application and got 15 days pay in a order. It was not a fault of the workman but he did so according to the Instructions of the respondent. He further argued that the respondent has not proved on the file that the claimant has any supervisory control over any workman and he was doing the managerial or supervisory duties. He was just like a Senior watchman in the Distillary Unit and working according to the instruction of the manager of the unit. He has nothing to do about the supervisory or managerial duties. So the workman comes under the definition of workman.

After hearing the arugments of both sides and going through the file, I am of the view that the respondent has failed to prove this fact that the claimant comes under the supervisory staff or having any managerial duties. The designation makes no difference for deciding the issue of the workman. It is the duty what the person does for deciding the issue of the workman. The respondent has not produced any document or evidence on the file to prove that the claimant used to do some supervisory or managerial duty. When he was drawing Rs. 450 per month as salary he cannot be said to be having a supervisory or the managerial duty. He was just like a Head Watch man receiving a very meagre amount as salary. Though the workman has admitted Ex.M-4 but the explanation of the workman that he gave this application on the advice of the respondent to get some financial benefits as they were not giving the overtime for the last one year. So in these circumstances, I hold that the claimant comes under the definitionof workman under section 2(s) of the Industrial Disputes Act, 1947. So the issue is decided in favour of the workman and against the respondent.

*Issue No.* 2.—Issue No. 2 is for the gainfully employment of the workman since his termination. The respondent produced no document or any evidence to prove this issue except the management witiness Shri Chander Parkash, Time Keeper has stated in his statement that the workman told him that he was workingin Udaipur It does not prove the contention of the respondent as gainfully employed of the workman. So the issue is decided against the respondent and in favour of the workman.

*Issue No.* 3.—Issue No. 3 is as per reference.

The representative of the respondent argued on this issue that the workman was appointed on 12th April, 1974 in the Distillary Unit as Security Officer but there respondent manageent constituted a Establishment Sub-Committee for knowing the loss in the concern. The Sub-Committee after considering all the facts decided according to Ex M-3 which was put before the Board of Directors of the Mills and the Board of Directors after careful examining the report submitted by the Sub-Committee took the decision to remove unnecessary staff and they recommended Agenda A to D at page six of the original report of the Establishment Sub-Committee and approved the same. The Establishment Sub-Committee recomended to the Board that there is no justification of the post of Security Officer in the Distillary Unit particularly when the entire watch and ward was controlled by the Sugar Mills Security Officer and there was one Chief Security Officer besides the Security Officer. So the services of the Security Officer was terminated after completing all the provisions of the law. After Boards passing this resolution dated 18th August, 1977, the General Manager gave the notice to the claimant which is Ex. M-1 and in that notice it was disclosed to the claimant as per decision of the Directors of the mills meeting held on 15th October, 1977.On the recommendation of Establishment Sub-Committee under resolution No. 11 dated 18th November, 1977 the post of Security Officer in the Distillary was abolished. Since he was the only Security Officer so he was given one month notice and retrenchment compensation. As there was some defect in the notice dated 3rd November, 1977 the respondent gave another registered notice to the claimant which is Ex. M-2 dated 5th November, 1977 which his services were terminated from 6th November, 1977 as the post is abolished by the Board he further argued that as stated by respondent witness Shri Chander Parkash MW-1, the Distillary unit was in a loss and the board decided to abolish the post because it can be done by the another old staff which was already working for the Sugar Mill and was there to control the security arrangement. He further argued that the post of claimant was superfluous and created by some interested person for his self interest but when the matter come before the Board and they decided to abolish it there was no security officer before the posting of this workman in the Distillary unit and no other person was appointed in his place because the post was no longer required in the Distillary unit. He further argued that two money orders for retrenchment compensation were sent to the claimant. The claimant received one money order of Rs. 550 but the other money order of Rs. 574.41 came back un-delivered and there was no reason given. On the original postal receipt there is report of the postal authority that the claimant is not available. It might be that the claimant has gone to Udaipur so it was not delivered to the workman. He further argued that the workman received this compensation which was sent by the money order and the post was abolished as not required by the respondent. Then there is no industrial dispute between the parties. He further argued that the workman has taken the plea of notice under section 9-A which is not applicable in this case to the claimant. There was no change of service in this case. His services were terminated because they were not required and the workman was retrenched according to the rules and there was no other person in the distillery unit as Security Officer so no Seniority list was required for any objection. He further argued that the workman is not entitled for any relief because the workman was removed from the service on 6th November, 1977 and the reference came in this court on 31st October, 1981 after a lapse of four years the delay explained by the claimant is not satisfactory and not according to law. The Government rejected the first demand notice of the workman according to the claim statement of the workman He filed an appeal and the Government accepted the appeal and sent the same to the Court for adjudication. But there is no intimation in this respect and no opportunity was given to the respondent for accepting the appeal of the workman and the Government cannot accept the appeal without hearing the parties. If the Government has done some illegal, the respondent is not responsible for that and the reference is bad in law because there should be a conciliation proceedings before the final reference with the demand notice was once rejected. The rspondent should have been given the opportunity of being heard by the Government which was not done and the reference is bad in law. So this may be rejected.

The respresentative of the workman argued on this issue that claimant cannot remove the workman from service without giving the notice under section 9-A of the Industrial Disputes Act because the management adopted the scheme of rationalisation and standardisation for that reason they have surplus labour in both the mills. The company was facing heavy losses so the rationalisation was effected by the company to effect economy. So the notice was mandatory in these circumstances and the orders passed by the General Manager is not operative and the workman may be deemed to be in service for all the puurposes and the retrenchment of the workman was against the law and the orders are unjustified. So the workman be reinstated with full back wages and continuity of service.

After hearing the arguments of both the sides and going through the file I am of the view that the respondent has rightly passed the orders on the basis of recommendations of the Establishment Sub-Committee constituted by the Board and after approval of the scheme recommended by that committee. The arguments put forward by the respondent have some force of facts and law. Whereas the workman has failed to prove that the orders of the respondent is illegal and without any justification. So the issue is decided in favour of the respondent and against the workman. After deciding the issue in favour of the respondent, the workman is not entitled for any relief.

This be read in answer to this reference.

Dated the 2nd August, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

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Endorsement No. 1775, dated the 17th August, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.